

D.T.E. 00-89

Investigation by the Department of Telecommunications and Energy on its own motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq., revising the billing and termination procedures contained in 220 C.M.R. § 25.00 et seq.

ORDER ADOPTING EMERGENCY REGULATION

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A § 2, the Department of Telecommunications and Energy (“Department”) adopts emergency regulations amending the definition of “financial hardship” contained in the Department’s billing and termination procedures, 220 C.M.R. § 25.01(2). The definition, previously based on an annual income less than 150 percent of the federal poverty level,¹ is expanded to include all persons eligible for state fuel-assistance funds from the Low-Income Home Energy Assistance Program (“LIHEAP”). LIHEAP funds for the current fiscal year are available to households with an income up to and including 200 percent of the federal poverty level. Other sections of the regulations have been revised, as needed to track changes in statutory language. With the winter heating season begun, the emergency regulation is necessary for the public safety and general welfare to extend the protection from termination of utility service to a greater number of low-income working families, particularly during the period of November 15 through March 15 (“winter moratorium”). A final Order must be issued within 90 days after an opportunity to comment pursuant to G.L. c. 30A § 2. The emergency regulations are designated as 220 C.M.R. § 25.00, et seq. and are effective upon filing with the Secretary of the Commonwealth.

II. HISTORY OF THE PROCEEDING

¹ The federal poverty level is defined in poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

The Department's consumer protection regulations include procedures by which all gas, electric and water utility companies subject to Department jurisdiction handle residential billing and termination of service. 220 C.M.R. § 25.00 et seq. ("Section 25"); see Cambridge Electric Light Company v. Department of Public Utilities, 364 Mass. 474 (1973) (finding Department regulations concerning billing and termination valid). Section 25 consumer protections include the following: 1) a winter moratorium on the termination of service to gas and electric heating customers who demonstrate financial hardship, 2) the prohibition of termination of service to elderly and ill customers and to customers who have an infant, and who can demonstrate financial hardship, 3) restrictions on the termination of service to tenants whose electric bills are paid by their landlord, 4) a process for dispute resolution, and 5) notification and timing requirements for billing and termination of service.² Section 25 currently provides that "financial hardship" exists:

when a customer is unable to pay an overdue bill and such customer's income, as defined in the Income Poverty Guidelines (Revised), 45 CFR Part 1060.2-2(d)(1), as amended, is less than 150% of said guidelines as established by the United States Community Services Administration or its successor, or when the Director of the Department's Consumer Division, or his designee, determines that such a finding is warranted.

220 C.M.R. § 25.01(2).

As another consumer protection, LIHEAP provides funding to 22 local non-profit corporations that reimburse heating bills for residents who qualify for assistance. LIHEAP is funded by the United

² Section 25 implements, in part, the Department's authority under G.L. c. 164, § 124A (serious illness and financial hardship); G.L. c. 164, § 124E (elderly residents); G.L. c. 164, § 124F (electric service is used to provide heat or to operate the heating system of the customer's unit or building and financial hardship); and G.L. c. 164, § 124H (infant less than twelve months old and financial hardship).

States Department of Health and Human Services and is administered by the Massachusetts Department of Housing and Community Development. The program provides fuel assistance to low-income people in Massachusetts with annual incomes of up to 175 percent of the poverty level.³

Faced with increasing fuel costs, the General Court has expanded state eligibility for the LIHEAP program to include households whose annual income is up to 200 percent of the federal poverty level. St. 2000, c. 316, § 2A. The appropriations for fiscal year 2001 add a one-time supplement of \$12 million to the Commonwealth of Massachusetts' allotment of federal LIHEAP funds for additional fuel assistance this winter. Id. The legislation further provides that all LIHEAP funds be expended in the following order of priority: 1) all eligible households not previously awarded assistance by the federal program, 2) working families with incomes between 175 and 200 percent of the federal poverty level, 3) and households previously awarded federally-funded assistance in fiscal year 2001.

Id.

By this rulemaking, the Department seeks to define financial hardship in Section 25 in a manner consistent with the state's current eligibility requirements for LIHEAP. That is, any customer who qualifies for emergency home heating assistance via LIHEAP would meet the criteria for financial hardship under 220 C.M.R. § 25.03 (1)(b) and thus be protected from termination of service due to nonpayment where the remaining conditions in 220 C.M.R.

³ The criteria for state eligibility is based upon the federal law governing LIHEAP funding, which provides that eligibility is limited to households with incomes up to 150 percent of the federal poverty income guidelines, or, if higher, 60 percent of the state's median income. 42 U.S.C. § 8624(b)(2)(B)(i)-(ii)(1981).

§ 25.03(1)(a) are found to exist.⁴

III. ANALYSIS

The expansion in eligibility for LIHEAP assistance to Massachusetts households with incomes between 175 and 200 percent of the federal poverty level recognizes the increasing fuel costs expected this winter and the potential for these costs to create hardship for many low-income consumers. By this Order, the Department extends protection from service termination to the same category of low-income households. The need to move with dispatch at the beginning of the winter moratorium period necessitates resort to the emergency regulation provision of the Administrative Procedure Act. G.L. c. 30A, § 2. Before the amended regulation can become permanent, however, further action will be required, including an opportunity for public comment. Id. A later public hearing and Department Order will provide that opportunity.

The Department's authority to adopt emergency regulations is clear. The Department's regulations provide that upon a finding that "the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public

⁴ Where a customer is unable to pay an overdue bill or portion thereof, because of financial hardship, a utility company may not terminate or refuse to restore service to the home of any customer if it is certified to the company: "1) that the customer or someone living in the customer's home is seriously ill, or 2) that there is domiciled in the home of the customer a child under the age of twelve months and the customer's service has not been shut off for nonpayment before the birth of the child, or 3) between November 15 and March 15, that the customer's service provides heat or operates the heating system and that the service has not been shut off for nonpayment before November 15." 220 C.M.R. § 25.03(1).

hearing would be contrary to the public interest,” the Department may dispense with such requirements and adopt emergency regulations. 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2.

The increase in energy costs has been sudden and rapid. The Department finds that the amendment of the rules and regulations governing the definition of financial hardship applicable in the billing and termination procedures is necessary to increase the number of persons receiving protection from termination of utility service as fuel costs increase and hence are necessary for the public health, safety or general welfare. The Department further finds that delay of implementation of these regulations caused by the requirements of notice and public comment would not be in the public interest: delay would severely hamper our ability to immediately protect consumers at the beginning of the winter moratorium period. The time frame required for ordinary rulemaking procedures is too lengthy to address consumers’ pressing needs this winter.

Accordingly, the Department adopts as emergency regulations 220 C.M.R. § 25.00 et seq. entitled “Billing and Termination Procedures of the Department of Telecommunications and Energy.” These regulations become effective upon filing with the Secretary of the Commonwealth and will remain in effect for a period not to exceed 90 days.

IV. ORDER

Accordingly, it is

ORDERED: That the regulations attached hereto and designated at 220 C.M.R. § 25.00 et seq. are reasonably necessary for the public health, safety or general welfare within the meaning of G.L. c. 30A, § 2.; and it is

FURTHER ORDERED: That the regulations entitled “Billing and Termination Procedures of the Department of Telecommunications and Energy” attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED: That these regulations shall take effect upon filing with the Secretary of the Commonwealth.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr. Commissioner

Deirdre K. Manning, Commissioner